

Judgment puts future of Mesa in question

Kristi Pihl, Herald staff writer

MESA -- Interest fees are continuing to rack up and Mesa's future as an incorporated city remains uncertain as the city continues to battle a public records lawsuit filed by its former mayor.

Former Mayor Donna Zink and her husband Jeff Zink of Mesa were awarded \$239,000 in attorneys' fees and legal penalties by Superior Court Judge William Acey on Nov. 7, 2008.

Acey found the city guilty of improperly withholding public documents the Zinks requested.

To date, the city hasn't paid the judgment as it awaits another review of the case, which has dragged on for more than six years.

The dispute began in 2002 when Zink began requesting public records after the city said a building permit to repair her fire-damaged home had expired.

Acey initially ruled in 2005 in favor of the city. But after his decision was subsequently overturned and the case returned to him, he found Mesa had incorrectly handled requests for 172 public records that the Zinks had made over a 2 1/2-year period.

That left the city facing a fine that amounts to about \$545 for each of its 440 residents, or about 25 percent of the city's \$1 million annual operating budget.

City officials earlier discussed disincorporating the city or filing bankruptcy to avoid paying the judgment, but Terri Standridge, city clerk-treasurer, said no decision has been made. The city has said its insurance would not pay the judgment because the ruling found city officials had violated state law.

Meanwhile, the case is on hold in the state Court of Appeals. Mesa filed for a stay until the state Supreme Court reviews a decision in the precedent-setting Yousoufian public records case, said Ramsey Ramerman, who with Kennewick attorney Lee Kerr represents the city.

The Yousoufian case was cited in the Zinks' appeal.

In that case, Armen Yousoufian sued King County for violations of the Public Records Act, winning a fine of \$124,000 after a 12-year legal fight. However, the Supreme Court subsequently ruled that fine wasn't enough and returned the case to the trial court to set a larger fine.

Following that ruling, the Supreme Court agreed to rehear the case because Justice Richard Sanders, who wrote the majority ruling, was determined to have a conflict of interest. Sanders had a public records lawsuit pending in Thurston County while he participated in the Yousoufian case.

The court held the rehearing in September and is still considering the case.

Donna Zink said she's concerned that when penalties were determined in their case, Acey did not include 832 days when the records still were withheld by the city. That represents the period between Acey's 2005 decision in Mesa's favor and the Court of Appeals' decision overturning his initial ruling.

Taking those days out of the equation is not penalizing Mesa for what it did and the city needs to be held accountable, Zink said.

While the case is on hold, interest on the \$239,000 award is accruing at 12 percent. Zink said the unpaid penalty recently reached \$30,000, although the city has not confirmed the amount.

The Yousoufian case lays out how penalties should be calculated, Ramerman said. The largest issue for the city is whether the courts can consider the size and resources of a city when awarding penalties under the public records act.

The Zinks have now received all the requested records, except for some the city says were destroyed.

Once the Yousoufian case is decided, the Zinks' case could be heard by the Court of Appeals, or either party could appeal to the state Supreme Court, Zink said.

Zink said she is unsure if she and her husband will ever receive what the courts have said Mesa owes them in the 61/2-year old case. "We don't think this is ever going to end," she said.

Mesa isn't the only small town where issues concerning access to public records come up, Zink said, adding that she firmly believes in the importance of the Public Records Act.

"Public records are important even if it is just a small agency," she said.

Mesa has 1.5 staff members at city hall, Ramerman said, and 180 records requests can really disrupt a small city like Mesa.

"The importance of open government cannot be understated," he said, "but there is also a balance."

Ramerman said the case shows the state needs to look at ways to help small jurisdictions comply with the act, such as providing education. There also should be some way to keep disruption to small cities in check without decreasing government transparency, he said.

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